

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR08-255

DARREN L. WILSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 1, 2008

APPEAL FROM THE COLUMBIA  
COUNTY CIRCUIT COURT,  
[NO. CR-2007-45]

HONORABLE LARRY W.  
CHANDLER, JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Judge**

Appellant Darren Wilson appeals his conviction from the Columbia County Circuit Court on a charge of theft of property, a Class B felony, for which he was sentenced to eight years' imprisonment in the Arkansas Department of Correction and an additional five years' suspended imposition of sentence. On appeal, he challenges the sufficiency of the evidence to support the conviction. We affirm.

On March 19, 2007, appellant was arrested for committing the offense of theft against Ariel Miller on March 18, 2007. On April 3, 2007, the State filed an information formally charging him with the offenses of robbery and being a habitual offender. On November 5, 2007, the State filed an amended information charging appellant with the offense of theft of property over \$2,500. A bench trial was held on November 27, 2007. The State presented testimony from local police officer Todd Dew; Deborah Barrett, the mother of appellant's

girlfriend; Susan Ellis, an employee of Buzz Buy; and Ariel Miller, a friend of appellant's girlfriend and the individual who put the money in a sack on the counter for appellant.

After the State rested, appellant's counsel moved for a directed verdict, arguing that the State's primary witness, Ms. Miller, was by her own admission an accomplice, and that there was insufficient additional evidence to connect appellant with the commission of the offense. The circuit court denied the motion, finding that appellant's own statements provided corroboration.

Appellant then testified in his own defense. Appellant's counsel rested and renewed the motion for directed verdict, on the same basis as the initial motion but with some additional explanation. The circuit court denied the renewed motion and ultimately found appellant guilty and imposed the previously set-forth sentence. The judgment and commitment order was filed on December 4, 2007, and appellant filed a timely notice of appeal on December 5, 2007. This appeal followed.

#### *Sufficiency of the Evidence*

A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006). When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *White v. State*, 98 Ark. App. 366, 255 S.W.3d 881 (2007). Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Graham v. State*, 365 Ark.

274, 229 S.W.3d 30 (2006). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* Credibility determinations are made by the trier of fact, which is free to believe the prosecution's version of events rather than the defendant's. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

Appellant states that the primary witness for the State was Ariel Miller, who specifically testified that she would be considered an accomplice. She testified that she was a party to a scheme with appellant and his girlfriend to steal money from her employer. She further testified that she took money from her employer's bank bag and gave the sack containing the stolen money to appellant. Appellant asserts that the State failed to present sufficient evidence to convict him because it failed to corroborate the testimony of Ms. Miller, an accomplice, in accordance with Arkansas Code Annotated section 16-89-111(e)(1). The statute addresses accomplice liability and states that:

(A) A conviction or an adjudication of delinquency cannot be had in any case of felony upon the testimony of an accomplice, including in the juvenile division of circuit court, unless corroborated by other evidence tending to connect the defendant or the juvenile with the commission of the offense.

(B) The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof.

The corroborating evidence need not be sufficient standing alone to sustain the conviction, but it must, independent from that of the accomplice, tend to a substantial degree to connect the defendant with the commission of the crime. *Holsombach v. State*, 368 Ark. 415, 246 S.W.3d 871 (2007). The corroborating evidence may be circumstantial so long as it is

substantial; evidence that merely raises a suspicion of guilt is insufficient to corroborate an accomplice's testimony. *Id.* The test is whether, if the testimony of the accomplice were completely eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. *Id.*

Appellant points out that there was no testimony other than that offered by Ms. Miller that established that a crime was committed. Ms. Miller testified that she took the money from her employer. Additionally, another Buzz Buy employee, Susan Ellis, testified about the store's deposit procedure and identified a shift report. At no time was Ms. Ellis, or any other witness besides Ms. Miller, asked to confirm that a theft of any property from the business had occurred. He asserts that there was simply no evidence of such independent of Ms. Miller's testimony. Additionally, there was no evidence independent of Ms. Miller's testimony to specifically establish that appellant had knowledge that Ms. Miller had taken any money from her employer or had put it in a sack, or had turned that money sack over to him.

Appellant submits that when the testimony of Ms. Miller is totally eliminated from the case, the remaining evidence simply does not independently establish the commission of the crime or tend to connect him with its commission. Accordingly, even when viewed in the light most favorable to the verdict, he maintains the presentation of the State failed to meet the burden sufficient to sustain the conviction.

The State is quick to draw our attention to appellant's taped statement to Officer Dew, in which he stated that Sandra Clark, his girlfriend, received a call to pick up some food at the Buzz Buy from Ariel Miller. Appellant further stated that he entered the store, at which time

Ms. Miller asked him to “slap her”; but he refused. Appellant stated that he did not know “what was in the sack until [he] ran into some bag or something,” after which he threw the sack in the back seat of his vehicle. Appellant also noted that there was a towel in the car because the car had been washed and the towel was used to clean up the car.

Subsequently at trial, appellant testified that he knew Ms. Miller through his girlfriend, Ms. Clark. He admitted that on March 18, 2007, he and Ms. Clark drove to Buzz Buy in the blue Ford Contour that belonged to Ms. Clark’s mother. He explained that Ms. Miller was outside smoking when they drove up, and he walked into the store after her and saw a paper sack on the counter. He acknowledged taking the sack from the counter without paying for its contents. He further admitted that Ms. Miller asked him to slap her because he caught her smoking, but he refused.

The State points out that, although appellant claimed to be unaware of the money in the sack, he subsequently called Ms. Clark after his arrest and told her to bring the paper sack to the police station. The State also notes that, although appellant stated that a towel was kept in the glove box of the vehicle, the towel was discovered in the back seat when he was arrested. Additionally, appellant claimed to be living on food stamps, but he coincidentally paid his parole officer \$300 the day after the theft from the Buzz Buy occurred.

Ms. Clark’s mother, Ms. Barrett, testified that on March 19, 2007, she drove her daughter to the police station after receiving the call from appellant. She explained that her daughter carried a paper sack with her. Ms. Barrett explained that she owned two vehicles

at the time, a maroon Cougar and a blue Ford Contour, the latter of which she had allowed her daughter and appellant to drive.

Ms. Miller testified that she worked at the Buzz Buy on March 18, 2007, and that she knew Ms. Clark because they were co-workers. Ms. Miller testified that she and appellant had discussed robbing the Buzz Buy, but that they did not come up with a plan ahead of time. She explained that on March 18, 2007, she called Ms. Clark and told her that “today was the day and for [Clark] to come up there, because [she] had three g’s in a sack.” Ms. Miller explained that she took the money from the bank deposit, and, after calling Ms. Clark back, told Ms. Clark that she wanted appellant to hit her. She testified that when appellant arrived in the car, he came into the store wearing a towel over his head, asked where the money was located, took it, and then hit her.

The State points out that, in denying appellant’s motion for a directed verdict, the circuit court found that Ms. Miller’s testimony was corroborated by three facts: (1) appellant’s statement claiming that he got a sack from Ms. Miller with bags in it; (2) appellant’s reference to a towel being in the car; (3) appellant’s acknowledgment that Ms. Miller asked him to slap her. Although appellant argues that there was no testimony other than Ms. Miller’s to establish a crime or to link him to it, he ignores his own statements and testimony.

Under the test for corroborating evidence, in which the testimony of the accomplice must be able to be totally eliminated from the case, the State argues, and we agree, that the other evidence does in fact independently establish the crime and tends to connect appellant to the commission thereof. His earlier statements, as well as his testimony at trial, confirmed

Ms. Miller's testimony. Although his testimony conflicted with some of his own prior statements, the circuit court was clearly in the position to make determinations regarding appellant's credibility on those issues.

We hold that, when viewed in the light most favorable to the State, substantial evidence exists to support the felony theft conviction; accordingly, we affirm.

Affirmed.

ROBBINS and BIRD, JJ., agree.